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1 3993 Howard Hughes Parkway, Suite 600
2 Las Vegas, NV 89169-0961
3 Facsimile (702) 949-8321
4 Telephone (702) 949-8320

5 40 North Central Avenue, Suite 1900
6 Phoenix, Arizona 85004-4429
7 Facsimile (602) 734-3824
8 Telephone (602) 262-5311

9 Susan M. Freeman AZ State Bar No. 004199
10 Email: sfreeman@lrlaw.com
11 Rob Charles NV State Bar No. 0065934
12 Email: rcharles@lrlaw.com

13 Attorneys for Official Committee of Unsecured Creditors

14 **UNITED STATES BANKRUPTCY COURT**
15 **DISTRICT OF NEVADA**

16 **In re:**

17 **USA Commercial Mortgage Company**
18 **06-10725 – Lead Case**

19 **USA Capital Realty Advisors, LLC**
20 **06-10726**

21 **USA Capital Diversified Trust Deed Fund,**
22 **LLC**
23 **06-10728**

24 **USA Capital First Trust Deed Fund, LLC**
25 **06-10728**

26 **USA Securities, LLC**
27 **06-10729**

Debtors.

Jointly Administered

Chapter 11 Cases

Judge Linda B. Riegle Presiding

**Unsecured Creditors Committee's
Response to Debtors' Motion For An
Order Pursuant To 11 U.S.C. §§ 105(a),
327(a) and 331 Authorizing Retention
Of Professionals Utilized By Debtors In
The Ordinary Course Of Business**

Date: September 28, 2006

Time: 9:30 a.m.

Affecting:

All Cases

or Only:

- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

28 The Official Unsecured Creditors Committee for USA Commercial Mortgage
29 Company ("Unsecured Committee") responds to Debtors' Motion For An Order Pursuant
30 To 11 U.S.C. §§ 105(a), 327(a) and 331 Authorizing Retention Of Professionals Utilized
31 By Debtors In The Ordinary Course Of Business (the "Motion").

1 “The Debtors seek to retain the services of various attorneys to act as local counsel
 2 for one or more of the Debtors with respect to negotiations, bankruptcies, foreclosures, and
 3 litigation arising from Debtors’ loan portfolios which are secured by real property in
 4 numerous states across the country.”¹ With respect to lawyers hired to collect loans and
 5 foreclose upon collateral for loans, the Unsecured Committee notes that Lenders are
 6 obligated to pay, either in advance, or to reimburse USACM, for the pro rata portion of
 7 USACM’s out of pocket expenses incurred, under ¶ 4 of each Lender’s Loan Servicing
 8 Agreement.

9 While the primary impact of the choice of counsel will accordingly fall upon the
 10 applicable Lenders, it is not uncommon for borrowers in default to negotiate settlements of
 11 foreclosure and collection litigation. Such settlements could well affect the default interest
 12 and other fees charged by USACM. Under the proposed transaction with Silver Point
 13 Capital or a higher bidder for loan servicing rights, USACM’s rights with respect to post-
 14 closing default interest and servicing fees for most loans would be transferred, but
 15 USACM will retain its interest in pre-closing accrued default interest and other fees. The
 16 counsel to be selected will be negotiating and litigating entitlements that directly affect
 17 USACM’s unsecured creditors.

18 Further, upon confirmation of a plan of reorganization in these cases, it is likely that
 19 certain loans now serviced by USACM will be prosecuted by a creditors trust for the
 20 benefit of USACM creditors, or by USA Capital Diversified Trust Deed Fund, LLC
 21 (“Diversified”) for the benefit of its investors, or both. As to these loans too, the choice of
 22 counsel now may materially affect creditors’ recovery.

23 Where a given Loan is owned entirely or substantially by either Diversified or USA
 24 Capital First Trust Deed Fund, LLC, prior consultation with the applicable Fund over
 25 selection of counsel should be both routine and expected. As to Loans owned principally

26 ¹ Motion at 2 ¶ 4.



1 by Direct Lenders, given the importance to Direct Lenders of the expertise and expense
2 associated with such counsel, the Unsecured Committee requests that USACM consult in
3 advance and reach an agreement with at least the Unsecured Committee (and the Direct
4 Lenders Committee, if they request such involvement) before loan enforcement counsel
5 are employed.

6 USACM seeks authority to retain other ordinary course professionals, in addition to
7 those involved with collecting specific loans. All of the expense of professionals
8 employed by USACM is ultimately borne by USACM's creditors, unless reimbursed by
9 Borrowers or Lenders. The USACM is hardly awash in cash. Under those circumstances,
10 the Unsecured Committee requests that USACM consult in advance and reach an
11 agreement with the Unsecured Committee before such professionals are employed, to
12 ensure that their employment is appropriate under the circumstances and their fees will be
13 reasonable.

14 Dated September 19, 2006.

15 **LEWIS AND ROCA LLP**

17 By /s/ RC (#006593)

18 Susan M. Freeman, AZ 4199 (pro hac vice)
19 Rob Charles, NV 6593

20 *Attorneys for Official Unsecured Creditors' Committee*
21 for USA Commercial Mortgage Company

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